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17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE NORTHERN DISTRICT OF CALIFORNIA
19
20 SAN FRANCISCO DIVISION

21 CATHOLIC CHARITIES CYO (SAN
22 FRANCISCO);) Case No. 1307

23 INTERNATIONAL INSTITUTE OF THE EAST BAY;) COMPLAINT FOR
24 VOCES UNIDAS PROJECT;) DECLARATORY AND
25 CENTRAL AMERICAN RESOURCE CENTER) INJUNCTIVE RELIEF
26 (LOS ANGELES);)

27 HERMANDAD MEXICANA NACIONAL;) [CLASS ACTION]
28 SANCTUARY FOR FAMILIES (NEW YORK);)

29 FRIENDLY HOUSE (PHOENIX);)

30 DIOCESAN MIGRANT & REFUGEE SERVICES,)

31 INC. OF EL PASO; SERGIO BUCIO PEREZ AND)

32 ANDRES BUCIO PEREZ, THROUGH THEIR NEXT)

33 FRIEND, SANDRA BUCIO; SANDRA BUCIO;)

34 XIOMARA CASTRO; RAMONA QUINTERO; LUIS)

35 R. NUNEZ HERNANDEZ; RICARDO NUNEZ)

36 HERNANDEZ; ELIZABETH LOPEZ GOMEZ;)

37 MARIA ESTERVINA PEREZ; GIOVANA)

38 SAAVEDRA; ELEUTERIO RODRIGUEZ RUIZ;)

39 FELIPE SANCHEZ MARTINEZ; FRANCISCA)

40 RAMIREZ ALVAREZ; CONSTANTINA CAMPOS;)

41 IRMA MORENO SANVICENTE; ROSA GALAVIZ;)

42 MARIA LUISA ARROYO; JUAN FRANCISCO)

ORIGINAL
FILED

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MAR - 6 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1307

PJH

1 ROCHA ROCHA; JORGE DOMINGUEZ RIVERA,)
2 Plaintiffs,)
3 -vs-)
4 MICHAEL CHERTOFF, Secretary,)
5 U.S. Department of Homeland Security;)
6 UNITED STATES CITIZENSHIP AND)
7 IMMIGRATION SERVICES, U.S. DEPARTMENT)
8 OF HOMELAND SECURITY,)
9 Defendants.)
-----)

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Complaint

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PRELIMINARY STATEMENT

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4 1. This is a class action seeking declaratory and injunctive relief
5 compelling Defendants Michael Chertoff, Secretary of the U.S. Department of
6 Homeland Security ("DHS") and the United States Citizenship and Immigration
7 Services ("USCIS") to discharge their statutory duty to permit immigrant crime
8 victims who assist law enforcement officials in the investigation or prosecution of
9 criminal offenders to apply for lawful immigration status. On October 28, 2000—
10 over six years ago—the Victims of Trafficking and Violence Protection Act of
11 2000, Pub. L. No. 106-386, Div. A, 114 Stat. 1464 (2000), codified at, *inter alia*, 8
12 U.S.C. § 1101(a)(15)(U) ("Crime Victims Act" or "Act"), was signed into law.
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14 Among other things, the Crime Victims Act permits immigrants who are victims
15 of serious crimes and who assist law enforcement to apply for and receive "U"
16 visas. After possessing U status for three years, such immigrants may apply for
17 lawful permanent resident status. Section 1101(a)(15)(U) reflects Congress's
18 judgment that certain crime victims should be permitted to remain lawfully in
19 the United States both for humanitarian reasons and so that they may help bring
20 dangerous, violent criminals to justice.

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22 2. Despite having six years to do so, defendants have unlawfully failed to
23 implement the U visa program. Defendants have failed to promulgate
24 regulations, establish procedures, or publish application forms through which
25 crime victims may apply for U visas. Defendants have set no filing fee, nor have
26 they trained and assigned officers to adjudicate U visa applications. Nor have
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Complaint

1 defendants referred immigrant crime victims for social services, as required by
2 the 6-year old U visa law. When individuals who are *prima facie* eligible for U
3 visas, including the named individual plaintiffs herein, request defendants to
4 issue them U visas (or promulgate regulations and procedures permitting them
5 to apply for such visas), defendants have refused. Consequently, immigrant
6 crime victims have no way to apply for the immigration benefits Congress
7 conferred on them some six years ago.
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9 3. Plaintiffs and crime victims' advocates have repeatedly urged
10 defendants to promulgate regulations and procedures implementing the U visa
11 program and to begin issuing eligible individuals U visas without further delay.
12 Defendants have ignored these entreaties, and plaintiffs now seek judicial relief
13 on behalf of themselves and those similarly situated requiring defendants to
14 discharge their statutory duty and to restore plaintiffs and their class members to
15 the position they would be in but for defendants' persistent non-feasance of their
16 lawful obligations. Defendants' failure to implement the U visa statute not only
17 unlawfully ignores an existing law, it also discourages immigrant victims of
18 crimes from reporting such crimes and cooperating with law enforcement, and
19 more importantly often allows the perpetrators of crimes to avoid arrest and
20 conviction for such crimes.
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3 JURISDICTION AND VENUE
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5 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331
6 (federal question jurisdiction). Declaratory judgment is sought pursuant to 28
7 U.S.C. §§ 2201-02.
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9 5. Venue is properly in this district pursuant to 28 U.S.C. § 1391(b) and
10 (e)(1), (2) and (4), because some of the acts complained of occurred in this district,
11 some of the plaintiffs reside in this district, defendants have offices in this
12 district, and no real property is involved in this action.
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14 III
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16 PARTIES
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18 6. Plaintiff CATHOLIC CHARITIES CYO is a non-profit organization serving
19 the immigrant communities of San Francisco, Marin, and San Mateo Counties in
20 California. Among other activities, CATHOLIC CHARITIES CYO provides legal aid
21 to indigent immigrants who wish to legalize their status. These services include
22 assistance to immigrant victims of serious crimes who have cooperated with law
23 enforcement agencies. Defendants' failure to implement the U visa provisions of
24 the Crime Victims Act and refusal to grant crime victims U visas interferes with
25 CATHOLIC CHARITIES CYO's work and makes the achievement of its goals
26 substantially more difficult. The unavailability of U visas requires CATHOLIC
27 CHARITIES CYO to assist clients to apply for two benefits instead of one. First, it
28 must assist clients to apply for "deferred action," a discretionary status offered
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1 immigrants and for temporary employment authorization, relief that must be
2 renewed through a new application annually. This is the only temporary relief
3 that defendants have offered to U visa applicants willing to seek relief prior to
4 the issuance of a formal application form and regulations describing those
5 immigrants whom defendants consider eligible for U visa status. Second, if and
6 when implementing regulations are finally promulgated, CATHOLIC CHARITIES
7 CYO must then assist its clients to apply for U visas. Defendants' non-feasance
8 and other unlawful policies as herein alleged are therefore diverting the limited
9 resources of CATHOLIC CHARITIES CYO and making their work and achievement
10 of their goals more difficult and costly. CATHOLIC CHARITIES CYO's delivery of
11 services to crime victims eligible for U visas is more difficult, time-consuming,
12 and expensive than is its delivery of like services to persons who seek lawful
13 status under provisions of the Immigration and Nationality Act for which
14 implementing regulations have been duly promulgated.

15 7. Plaintiff INTERNATIONAL INSTITUTE OF THE EAST BAY ("IIEB") is a non-
16 profit legal organization that provides free and low-cost legal and social services
17 to immigrants and refugees in the East Bay of Northern California. Among other
18 activities, IIEB provides legal aid to indigent immigrants who wish to legalize the
19 status. These services include assistance to immigrant victims of serious crimes
20 who have cooperated with law enforcement agencies. The unavailability of U
21 visas requires IIEB to assist clients to apply for two benefits instead of one. First,
22 it must assist clients to apply for "deferred action" and for temporary
23 employment authorization, relief that must be renewed through a new
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Complaint

1 application annually. Second, if and when implementing regulations are finally
2 promulgated, IIEB must then assist its clients to apply for U visas. Defendants'
3 non-feasance and other unlawful policies as herein alleged are therefore
4 diverting the limited resources of IIEB and making their work and achievement
5 of their goals more difficult and costly. IIEB's delivering services to crime victims
6 eligible for U visas is more difficult, time-consuming, and expensive than is its
7 delivering like services to persons who seek lawful status under provisions of the
8 Immigration and Nationality Act for which implementing regulations have been
9 duly promulgated.

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12 8. Plaintiff VOCES UNIDAS PROJECT OF THE CENTER FOR HUMAN RIGHTS
13 AND CONSTITUTIONAL LAW ("VOCES UNIDAS") is a national program addressing
14 the needs of Mexican national immigrants residing in the United States who are
15 survivors of domestic abuse and victims of crime. The VOCES UNIDAS project
16 provides technical support and funding for numerous non-profit organizations
17 providing free legal services to immigrant survivors of domestic violence and
18 victims of crime. It also provides free legal services to low-income and under-
19 served immigrants, including those who wish to apply for U visas. Defendants'
20 failure to implement the U visa provisions of the Crime Victims Act and refusal
21 to grant crime victims U visas interferes with VOCES UNIDAS's work and makes
22 the achievement of VOCES UNIDAS's goals substantially more difficult. The
23 unavailability of U visas requires that VOCES UNIDAS provide a range of
24 technical support services it would not have to provide if defendants issued
25 regulations setting forth eligibility standards and procedures for adjudicating U
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Complaint

1 visas. The absence of regulations also requires that the VOCES UNIDAS project
2 assist its direct services clients to apply for two benefits instead of one. First, it
3 must assist clients to apply for "deferred action" and for temporary employment
4 authorization, relief that must be renewed through a new application annually.
5 Second, if and when implementing regulations are finally promulgated, VOCES
6 UNIDAS must then assist its clients to apply for U visas. Defendants' non-feasance
7 and other unlawful policies as herein alleged are therefore diverting the limited
8 resources of VOCES UNIDAS and making their work and achievement of their
9 goals more difficult and costly. VOCES UNIDAS's delivering services to crime
10 victims eligible for U visas is more difficult, time-consuming, and expensive than
11 is its delivering like services to persons who seek lawful status under provisions
12 of the Immigration and Nationality Act for which implementing regulations
13 have been duly promulgated.

17 9. Plaintiff CENTRAL AMERICAN RESOURCE CENTER ("CARECEN") is a
18 California not-for-profit corporation located in Los Angeles, California.
19 CARECEN's purposes include protecting and promoting fair and lawful public
20 policies toward immigrants, ensuring compliance with federal laws and the
21 United States Constitution by federal, state and local government agencies in
22 their treatment of immigrants, and delivering social services and humanitarian
23 assistance to immigrants and their families. These services include assistance to
24 immigrant victims of serious crimes who have cooperated with law enforcement
25 agencies. The unavailability of U visas requires CARECEN to assist clients to
26 apply for two benefits instead of one. First, it must assist clients to apply for
27 Complaint

1 "deferred action" and for temporary employment authorization, relief that must
2 be renewed through a new application annually. Second, if and when
3 implementing regulations are finally promulgated, CARECEN must then assist
4 its clients to apply for U visas. Defendants' non-feasance and other unlawful
5 policies as herein alleged are therefore diverting the limited resources of
6 CARECEN and making their work and achievement of their goals more difficult
7 and costly. CARECEN's delivering services to crime victims eligible for U visas is
8 more difficult, time-consuming, and expensive than is its delivering like services
9 to persons who seek lawful status under provisions of the Immigration and
10 Nationality Act for which implementing regulations have been duly
11 promulgated.

10. Plaintiff HERMANDAD MEXICANA NACIONAL ("HMN") is a
11 membership and social and legal services not-for-profit California corporation
12 with several offices located in the County of Los Angeles, California. HMN's purposes
13 include protecting and promoting fair and lawful public policies
14 toward immigrants, ensuring compliance with federal laws and the United States
15 Constitution by federal, state and local government agencies in their treatment of
16 immigrants, and delivering social services and humanitarian assistance to
17 immigrants and their families. HMN has approximately 15,000 members, most of
18 whom are immigrants. HMN has members and clients who are the victims of
19 crime in the United States and who have cooperated with law enforcement
20 agencies. As a direct and proximate result of defendants' non-feasance as alleged
21 herein, HMN's members are unable to obtain U visas. Some members are
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1 unwilling to apply for deferred action because they fear such applications may
2 prejudice their eligibility for U visas if defendants later issue U visa guidelines or
3 regulations that are inconsistent with the guidelines defendants currently use in
4 determining whether to grant deferred action. The unavailability of U visas
5 requires HMN to assist clients to apply for two benefits instead of one. First, it
6 must assist clients to apply for "deferred action" and for temporary employment
7 authorization, relief that must be renewed through a new application annually.
8 Second, if and when implementing regulations are finally promulgated, HMN
9 must then assist its clients to apply for U visas. Defendants' non-feasance and
10 other unlawful policies as herein alleged are therefore diverting the limited
11 resources of HMN and making their work and achievement of their goals more
12 difficult and costly. HMN'S delivering services to crime victims eligible for U
13 visas is more difficult, time-consuming, and expensive than is its delivering like
14 services to persons who seek lawful status under provisions of the Immigration
15 and Nationality Act for which implementing regulations have been duly
16 promulgated.

17 11. Plaintiff SANCTUARY FOR FAMILIES ("SFF") is a New York not-for-profit
18 corporation located in New York, New York. SFF is dedicated to providing
19 services to victims of domestic violence. Among other activities, SFF provides
20 free legal services to low-income and under-served immigrants. These services
21 include assistance to immigrant victims of serious crimes who have cooperated
22 with law enforcement agencies. Defendants' failure to implement the U visa
23 provisions of the Crime Victims Act and refusal to grant crime victims U visas
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1 interferes with SFF's work and makes the achievement of SFF's goals
2 substantially more difficult. The unavailability of U visas requires SFF to assist
3 clients apply for two benefits instead of one: deferred action and, when and if
4 implementing regulations are promulgated, U visas. In addition, SFF has been
5 required to expend resources urging defendants to promulgate U visa
6 regulations and to issue its clients actual U visas. Defendants' non-feasance and
7 other unlawful policies as herein alleged are therefore diverting the limited
8 resources of SFF and making their work and achievement of their goals more
9 difficult and costly. SFF's delivering services to crime victims eligible for U visas
10 is more difficult, time-consuming, and expensive than is its delivering like
11 services to persons who seek lawful status under provisions of the Immigration
12 and Nationality Act for which implementing regulations have been duly
13 promulgated.

17 12. Plaintiff FRIENDLY HOUSE is an Arizona not-for-profit corporation
18 located in Phoenix, Arizona. Among other activities, FRIENDLY HOUSE provides
19 low cost, on-site immigration services to the immigrant community in greater
20 Maricopa County in the State of Arizona. These services include assistance to
21 immigrant victims of serious crimes who have cooperated with law enforcement
22 agencies. The unavailability of U visas requires FRIENDLY HOUSE to assist clients
23 to apply for two benefits instead of one. First, it must assist clients to apply for
24 "deferred action" and for temporary employment authorization, relief that must
25 be renewed through a new application annually. Second, if and when
26 implementing regulations are finally promulgated, FRIENDLY HOUSE must then
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1 assist its clients to apply for U visas. Defendants' non-feasance and other
2 unlawful policies as herein alleged are therefore diverting the limited resources
3 of FRIENDLY HOUSE and making their work and achievement of their goals more
4 difficult and costly. FRIENDLY HOUSE's delivering services to crime victims
5 eligible for U visas is more difficult, time-consuming, and expensive than is its
6 delivering like services to persons who seek lawful status under provisions of the
7 Immigration and Nationality Act for which implementing regulations have been
8 duly promulgated.

11 13. Plaintiff DIOCESAN MIGRANT & REFUGEE SERVICES, INC ("DMRS") is a
12 not-for-profit legal aid clinic located in El Paso, Texas. Among other activities,
13 DMRS provides free and low cost legal services to the low-income immigrants
14 eligible to legalize their status, including immigrant victims of crime who
15 cooperated with law enforcement agencies. The unavailability of U visas requires
16 DMRS to assist clients to apply for two benefits instead of one. First, it must
17 assist clients to apply for "deferred action" and for temporary employment
18 authorization, relief that must be renewed through a new application annually.
19 Second, if and when implementing regulations are finally promulgated, DMRS
20 must then assist its clients to apply for U visas. DMRS also has several clients
21 who are the immigrant parents of United States citizen children who are the
22 victims of crime and who or whose parents cooperated with law enforcement
23 agencies in the investigation or prosecution of such crimes, such that 8 U.S.C. §§
24 1101(U)(i)(III) in conjunction with 1184(p) operate to deny U visa eligibility to
25 these clients while granting such benefit to the immigrant parents of
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1 undocumented and lawful permanent resident children. Defendants' non-
2 feasance and other unlawful policies as herein alleged are therefore diverting the
3 limited resources of DMRS and making their work and achievement of their
4 goals more difficult and costly. DMRS's delivering services to crime victims
5 eligible for U visas is more difficult, time-consuming, and expensive than is its
6 delivering like services to persons who seek lawful status under provisions of the
7 Immigration and Nationality Act for which implementing regulations have been
8 duly promulgated.

11 14. Plaintiffs Sandra Bucio, Xiomara Castro, Ramona Quintero, Luis R.
12 Nuñez Hernandez, Ricardo Nuñez Hernandez, Elizabeth Lopez Gomez, Maria
13 Estervina Perez, Giovana Saavedra, Eleuterio Rodriguez Ruiz, Felipe Sanchez
14 Martinez, Francisca Ramirez Alvarez, Constantina Campos, Irma Moreno
15 Sanvicente, Rosa Galaviz, Maria Luisa Arroyo, Juan Francisco Rocha Rocha, and
16 Jorge Dominguez Rivera are victims of crime in the United States. Each plaintiff
17 is *prima facie* eligible for a U visa under federal law because –

- 19 (a) she or he "suffered substantial physical or mental abuse as a result of
20 having been the victim of criminal activity;"
21 (b) she or he "possesses information concerning the criminal activity;"
22 (c) she or he "has been helpful, is being helpful, or is likely to be helpful to
23 Federal, State, or local law enforcement official investigating or
24 prosecuting...[the] criminal activity;"
25 (d) "the criminal activity...violated the laws of the United States or
26 occurred in the United States," and

(e) "the criminal activity...involv[ed] ... rape, ... trafficking, ... domestic violence, ... sexual assault, false imprisonment ... [or] felonious assault..."

8 U.S.C. § 1101(a)(15)(U). As alleged herein defendants have unlawfully refused to afford said plaintiffs a means to apply for and receive U visas.

15. Plaintiffs have petitioned Defendants, in writing, to issue them U visas and to promulgate regulations implementing the Crime Victims Act. Defendants have unlawfully ignored these requests, just as they have ignored for over six years their duty to faithfully execute the law as enacted by Congress.

16. Plaintiffs SERGIO BUCIO PEREZand ANDRES BUCIO PEREZare minor children of Plaintiff SANDRA BUCIO. The Crime Victims Act provides in part that "the Attorney General may also grant status ... based upon certification of a government official listed in clause (i)(III) [including "Federal, State, or local law enforcement official[s]..."] that an investigation or prosecution would be harmed without the assistance of the ... child ... of the [crime victim]." 8 U.S.C. § 1101(a)(15)(U)(ii). Local law enforcement officials made such certifications for each of the above-mentioned minor plaintiffs. Defendants have unlawfully refused to adjudicate the U visa applications filed on behalf of Plaintiffs MINOR 1 and MINOR 2. Plaintiffs SERGIOand ANDRES BUCIO PEREZsue by and through their next friend and parent, Plaintiff SANDRA BUCIO.

17. Plaintiff SANDRA BUCIO is a citizen and national of Mexico. She is a resident of the City of San Francisco, State of California. Plaintiff BUCIO is a victim of an aggravated battery, false imprisonment and aggravated assault. She cooperated with law enforcement and is statutorily eligible for the issuance of a